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10 UNITED STATES BANKRUPTCY COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 In re

14 HOWREY LLP,

15 Debtor.

16) Case No. 11-31376 DM

17) Chapter 11

18) Hon. Dennis Montali

19) **CHAPTER 11 TRUSTEE'S
20) OBJECTION TO MCGRANE LLP
21) FINAL FEE APPLICATION**

22) Hearing Date: July 29, 2014

23) Time: 9:30 a.m.

24) Place: Courtroom 22

25) 235 Pine Street, 19th Floor
26) San Francisco, CA 94104

27) Judge: Honorable Dennis Montali

28 Allan B. Diamond, chapter 11 trustee for Howrey LLP (the "Trustee"), as and for his
29 objection (the "Objection") to the Motion of McGrane LLP ("McGrane LLP") for Fourth and
30 Final Allowance of Attorney's Fees and Reimbursement of Expenses as Counsel for the Official
31 Committee of Unsecured Creditors (the "Application"), respectfully represents as follows:

32 **PRELIMINARY STATEMENT**

33 1. McGrane LLP justified its retention as co-counsel to the Committee in two ways:

34 First, McGrane LLP agreed that its primary task would be to advise the Committee on certain
35 matters for which existing Committee counsel faced informal conflicts. Second, McGrane LLP
36 agreed to only take the lead on matters when requested to do so; and to not duplicate efforts of

1 other Committee counsel. Based upon those representations, the Trustee did not formally object
2 to the retention, although the Trustee did voice serious concerns that McGrane LLP's retention
3 would add to the administrative expenses of this case without providing any corresponding
4 benefits.

5 2. The Application demonstrates that the Trustee's concerns were well-founded. For
6 example, McGrane LLP seeks compensation for over \$46,000 in fees billed to stubbornly pursue
7 a theory it admits "has nothing to do with this case." McGrane LLP further seeks to be paid over
8 \$13,000 to duplicate the work of lead counsel to the Committee, and another \$20,200 for general
9 administrative matters such as preparing fee applications. Although the retention was justified
10 on the premise that existing Committee counsel was conflicted from handling several matters,
11 the Application does not contain a single time entry for work on any such matter.

12 3. Moreover, McGrane LLP's senior partner, William McGrane ("McGrane") now
13 admits that he provided false and misleading disclosures to the Trustee, the Creditors'
14 Committee, and this Court in support of his firm's engagement as Committee counsel. McGrane
15 was also reprimanded by this Court for violating the automatic stay. As discussed below,
16 McGrane's failure to make full and accurate disclosures in connection with his retention
17 application, coupled with his attempts to undermine the professionals who were appointed by the
18 United States Trustee and approved by this Court – presumably for his own benefit – warrants
19 disallowance of the entire Application and disgorgement of the \$63,925.64 McGrane LLP has
20 already been paid.

21 4. For all of these reasons, and as discussed in more detail below, the Trustee objects
22 to the Application, and seeks entry of an order disallowing the Application in its entirety and
23 requiring McGrane LLP to disgorge all amounts previously paid.

BACKGROUND

5. On April 11, 2011 (the “Commencement Date”), McGrane, acting as counsel to Give Something Back Inc., Jan Brown & Associates, and Matura Farrington Staffing Services, Inc., commenced a chapter 7 involuntary case against Howrey LLP. Thereafter, McGrane filed notices that Western Messenger Service, Inc. [Dkt. No. 8], L.A. Best Photocopies, Inc. [Dkt No. 8], Kent Daniels and Associates, Inc. [Dkt. No. 9], and Advanced Discovery LLC [Dkt. No. 10] were joining in the involuntary chapter 7 petition. Accordingly, as of April 2011, McGrane represented no less than seven Howrey LLP petitioning creditors.

6. On December 19, 2011, the Official Committee of Unsecured Creditors (the “Committee”), by and through its lead counsel Whiteford, Taylor & Preston, LLP (“Whiteford”), filed an application [Dkt. No. 483] seeking this Court’s authorization to retain McGrane as co-counsel to the Committee (the “Retention Application”). As part of that Retention Application, McGrane signed a sworn declaration (the “12/19/2011 Declaration”) wherein he stated, under oath, that McGrane LLP had terminated its representation of all Howrey individual creditors, including the seven petitioning creditors:

To the best of my knowledge, neither I nor any other attorneys or employees of [McGrane LLP] has any business connections with the Debtors, their creditors, their equity security holders, or which any parties in interest, their respective attorneys or accountants, or with the Office of the United States Trustee or any persons employed in the office of the United States Trustee, except as follows: (i) I am counsel to Development Specialists, Inc. in various unrelated matters; (ii) I was *previously* counsel (through my former law firm) to various petitioning creditors in this bankruptcy case and (iii) I was *previously* counsel to a Member of the Committee through my present law firm [emphasis added].

[Dkt. 483-1, p. 2, ¶ 6].

7. On December 28, 2011, the Trustee filed a statement in response to the Retention Application [Dkt. No. 489] (the “Trustee’s Response”), wherein the Trustee questioned whether

1 the Committee required additional counsel, and expressed concerns about whether McGrane
2 would duplicate Whiteford's efforts in representing the Committee. Notably, because McGrane
3 confirmed in the 12/19/2011 Declaration that he had terminated his relationships with each of the
4 petitioning creditors, the Trustee's Response raised no concerns about whether McGrane LLP
5 was qualified to be Committee counsel pursuant to 11 U.S.C. § 1103(b).

6 8. In reply to the Trustee's stated concerns, the Committee stated in its December
7 29, 2011, reply in support of the Retention Application [Dkt. No. 495] (the "Reply"), that:

8 9 The engagement of McGrane LLP also is appropriate in order to address
9 connections that Whiteford Taylor has with respect to certain parties in this
10 case. As disclosed by Whiteford Taylor in its engagement application,
11 Whiteford Taylor has connections with the Debtor's professionals, Wiley
12 Rein and Protiviti. While these connections do not rise to the level of formal
13 conflicts, having McGrane take the lead on behalf of the Committee with
14 respect to ongoing fee disputes in connection with Protiviti and Wiley Rein
15 would be prudent.

16 14 . . . both McGrane LLP and Whiteford Taylor have agreed to avoid
17 unnecessary duplication of services, with the much larger Whiteford, Taylor
18 & Preston, LLP firm to take the lead in most matters, and with the McGrane
19 LLP firm to take the lead in matters only as, when and if it is specifically
20 asked to do so by the Committee or Whiteford Taylor. As both McGrane
21 LLP and Whiteford Taylor must apply for their attorney's fees and costs
22 under 11 United States Code section 330, any violation of these undertakings
23 by way of any sort of improper billing practices by either firm can, of course,
24 and should be objected to by any interested party in any case.

25 Based in part on those representations, the Trustee understood that McGrane LLP's engagement
26 (and thus this estate's obligation to fund that engagement) would extend only to: (1) issues where
27 Whiteford had informal or formal conflicts, and (2) issues where McGrane LLP was asked to
28 take the lead, and that McGrane LLP and Whiteford would "avoid unnecessary duplication of
29 services." *Id.* With that understanding, the Trustee did not oppose entry of this Court's January
30 6, 2012, order authorizing the Committee to retain McGrane LLP, *nunc pro tunc* to December
31 15, 2011.

1 9. On September 26, 2012, McGrane withdrew as counsel to the Committee.
2 Approximately one month later McGrane, acting as counsel to a Georgia entity that had been
3 formed only two days earlier, filed a November 1, 2012, adversary proceeding entitled *Howrey*
4 *Claims LLC v. Paul Alexander, et al.*, adversary proceeding no. 12-03155 (the “Adversary
5 Proceeding”). The Bankruptcy Court later determined that McGrane violated the automatic stay
6 by commencing the Adversary Proceeding. *See Order Granting Trustee’s Motion to Enforce*
7 *Automatic Stay* [Dkt. No. 994]. That decision is currently on appeal to the United States District
8 Court for the Northern District of California.
9

10 10. In a November 9, 2012, filing entitled Supplemental Declaration of William
11 McGrane [Dkt. No. 857] (the “11/9/2012 Declaration”), McGrane offers an explanation for his
12 withdrawal as Committee counsel and his filing of the Adversary Proceeding. As part of that
13 11/9/2012 Declaration, McGrane again confirmed that his representation of all petitioning
14 creditors ended before he was hired as co-counsel to the Committee:
15

16 At no time while I was employed as co-counsel to the Committee, i.e.
17 between December 15, 2011 and September 26, 2012, did I ever represent
18 any person or entity for any purpose whatsoever or have any other
19 relationship whose existence and involvement in the referenced
20 bankruptcy case was required to be disclosed in the [12/9/2011
21 Declaration] other than as disclosed therein.
22

23 11/9/2012 Declaration, p. 4, ¶ 14.
24

25 11. On May 8, 2014, McGrane filed motion papers seeking removal of the Trustee
26 and disqualification of Diamond McCarthy LLP as the Trustee’s counsel (collectively, the
27 “Removal Papers”) [Dkt. Nos. 1727, 1729]. McGrane filed the Removal Papers on behalf of the
28 same petitioning creditors he previously swore under oath that he no longer represented:
29 Advanced Discovery, LLC, Give Something Back, Inc., Kent Daniels and Associates, Inc., L.A.
30

1 Best Photocopies, Inc., Matura Farrington Staffing Services, Inc., and Western Messenger, Inc.
2

3 *Id.*

4 12. On May 9, 2014, McGrane acknowledged *for the first time* – and only as part of a
5 failed self-serving attempt to force the removal of the Trustee – that his prior declarations were
6 “likely not complete” and that Advanced Discovery, LLC, Kent Daniels and Associates, Inc.,
7 and L.A. Best Photocopies, Inc. engaged McGrane as their counsel in 2011 and *never discharged*
8 *him*. See Second Supplemental Declaration of William McGrane, Dkt. No. 1740 (the “5/9/2014
9 Declaration”), p. 1, ¶¶ 3-4. Two days later, on May 11, 2014, McGrane filed a fourth declaration
10 in which he states that he was:

11 necessarily and continuously representing [Advanced Discovery, LLC,
12 Kent Daniels and Associates, Inc. and L.A. Best Photocopies, Inc.] at the
time I served as co-counsel to the Committee (as well as presently) . . .

13 See Third Supplemental Declaration of William McGrane [Dkt. No. 1745] (the “5/11/2014
14 Declaration”), p. 1, ¶ 3.

15 13. On May 30, 2014, McGrane filed the Application, wherein he seeks final
16 allowance of the \$63,925.64 that he has already been paid by this estate, and an additional
17 payment of \$15,631.41 on a final basis. Notably, the Application is completely devoid of any
18 discussion as to why McGrane should be entitled to any estate compensation in light of the
19 declaration he gave in support of his retention – a declaration which McGrane now admits was
20 “likely not complete”, and was in fact patently inaccurate. Indeed, one or more of Mr.
21 McGrane’s declarations to this Court under oath and penalty of perjury were inescapably false.
22

23 **OBJECTION**

24 14. For the reasons discussed below, the Trustee objects to allowance of the
25 Application. Firstly, the majority of the work for which McGrane seeks payment was to research
26

1 issues that McGrane admits have nothing to do with this case. Secondly, the Application reveals
2 that McGrane spent over 40% of his time duplicating Whiteford's work or attending to
3 administrative matters. McGrane's failure to demonstrate that he provided any benefits to this
4 estate, coupled with his disregard of the limitations on his engagement as set forth in the
5 Committee's Reply, justify disallowance of the Application.

6 15. Moreover, McGrane now admits that the information he provided to support his
7 retention was false and incomplete. Regardless of whether McGrane's inaccurate disclosures
8 resulted in actual harm to this estate, this Court has discretion to disallow the Application in its
9 entirety, and to require McGrane to disgorge all amounts that he has been previously paid.
10 Moreover, this Court has discretion to require McGrane to reimburse the estate for amounts
11 spent to enforce the automatic stay to prevent interference with one of this estate's most
12 significant assets. In light of McGrane's conduct and admitted false statements to the Court, the
13 Trustee submits that entry of an order requiring McGrane to disgorge all previously paid fees and
14 reimburse the estate for moving to enforce the automatic stay would be a reasonable exercise of
15 this Court's discretion.
16

17 18 *McGrane should not be compensated for time spent on
19 projects that provided no estate benefit.*

20 16. According to the Application, McGrane spent 58.87% of his time performing
21 "preliminary investigations into potential claims the Debtor may have under Chapter 5 or Section
22 723 of the Bankruptcy Code, and drafting a memorandum concerning a partnership liability
23 complaint" for which \$46,325.00 in compensation is sought. *See* Application, p. 7. According
24 to the theory McGrane was investigating, Howrey was not properly registered as a limited
25 liability partnership in California, and thus all of Howrey's California partners should be treated
26 as general partners. After spending over 70 hours "investigating" that theory, McGrane finally

1 admitted that “[s]ection 723 has nothing to do with this case.” See 11/9/2012 Declaration, ¶ 9, p.
2

3 17. When the Trustee first learned that McGrane was eager to argue that Howrey was
4 a California general partnership, he asked his counsel to investigate McGrane’s theory to
5 determine whether Howrey’s California partners could indeed be held liable as general partners.
6 Diamond McCarthy LLP, the Trustee’s counsel, researched those claims and ultimately
7 concluded that McGrane’s theory was unsupportable. The Trustee informed McGrane and the
8 Committee of that conclusion in May 2012, yet McGrane continued to devote time to the issue
9 and, in the process, racked up another \$27,760.00 in fees for which he now seeks estate
10 compensation.¹ In other words, of the \$46,325 McGrane charged to investigate this theory, 60%
11 of those fees were billed *after* the Trustee had told McGrane that the theory was unsupportable.

12 18. McGrane is entitled to compensation for his work on section 723 issues only if the
13 Court determines that those services “were beneficial at the time at which the service was
14 rendered towards the completion of a case . . .” and “were performed within a reasonable
15 amount of time . . .” 11 U.S.C. § 330(a)(3); *see also In re Strand*, 375 F.3d 854, 860 (9th Cir.
16 2004) (stating a five-part test for determining whether fees should be awarded under section
17 330). As discussed above, McGrane was aware as early as May 2012 that his general partnership
18 theories were unsupportable. The Trustee and his counsel spent approximately 16 hours to
19 debunk those theories. The fact that it took McGrane 4.5 times as long as the Trustee to
20 recognize that “section 723 has nothing to do with this case” does not justify his entitlement to
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24 ¹ Although McGrane seeks compensation for an “investigation” into possible section 723 claims that he now
25 asserts began in March 2012, McGrane previously swore under oath that he did not start to look at section
26 723 claims until October 2012. See 11/9/2012 Declaration, p. ¶8 (“In late October 2012, and in the course
of my research, *I first determined* to analyze whether partners in limited liability partnerships could be
subject to 11 U.S.C. § 723 [emphasis added].”) If McGrane did not commence his section 723 research
until October 2012 – after he had withdrawn from the Committee representation – then his present request
to be paid for that work should be summarily denied.

1 compensation for that extra work. *Unsecured Creditors' Committee v. Puget Sound Plywood,*
2 *Inc.*, 924 F.2d 955 (9th Cir. 1991).

3 19. The Ninth Circuit's analysis in *Puget Sound* is illustrative of why McGrane's
4 request for compensation on section 723 issues should be disallowed. In *Puget Sound*, counsel
5 for the unsecured creditors committee pursued objections to a secured creditor's claim even after
6 the debtor had "actively questioned the need for such a challenge and refused to participate on its
7 own behalf." *Puget Sound*, 924 F.2d at 958-59. Even after being so informed, counsel for the
8 creditors committee continued to bill time to pursue that challenge, which ultimately resulted in
9 an award to the estate that was substantially less than the recovery committee counsel sought. *Id.*
10 Nevertheless, committee counsel sought full compensation for its work on the challenge, arguing
11 that the ultimate result was irrelevant because the bankruptcy court had authorized the committee
12 to bring the challenge. *Id.* at 958. The bankruptcy court and the Ninth Circuit disagreed, holding
13 that the court's order "did not give [committee counsel] free reign to run up a tab without
14 considering the maximum possible recovery. . . . the court's intervention order did not relieve
15 [committee counsel] of his obligation to exercise billing judgment." As such, the Ninth Circuit
16 affirmed the bankruptcy court's substantial reduction of committee counsel's fees. *Id.* at 961.
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19 20. Similarly here, McGrane stubbornly continued to pursue section 723 and general
20 partnership theories long after the Trustee and the Trustee's counsel informed him that such
21 efforts would not result in any benefit to this estate. McGrane ultimately agreed with the Trustee
22 and abandoned those theories, but only after billing almost \$30,000 more in fees. From that
23 perspective, the present facts are actually *more* egregious than those justifying reduction of
24 counsel's fees in *Puget Sound*: at least in that case committee counsel's efforts resulted in some
25

1 recovery to the estate. Here, however, McGrane's dogged pursuit of theories he now admits are
2 irrelevant brought absolutely no benefits whatsoever to this estate.

3 21. As was the case with committee counsel in *Puget Sound*, this Court's order
4 approving McGrane's retention did not give him free reign to run up legal bills without
5 exercising billing judgment. *Puget Sound*, 924 F.2d at 958. McGrane's request to be
6 compensated for investigating section 723 issues should be disallowed in its entirety.²

7 *McGrane should not be compensated for services that were*
8 *inconsistent with representations he made to the Trustee and this*
9 *Court to support his engagement*

10 22. In response to the Trustee's concerns about McGrane's engagement, McGrane
11 agreed that he would only take the lead on projects for which Whiteford was conflicted, or for
12 which the Committee asked McGrane to take the lead. *See Reply*, pps. 2 – 3. Specifically,
13 McGrane's engagement was justified because Whiteford has connections with Howrey's former
14 chapter 11 professionals such that McGrane, rather than Whiteford, should handle issues with
15 respect to those professionals' final fee applications. *Id.* Moreover, McGrane's engagement was
16 justified because "McGrane LLP and Whiteford Taylor have agreed to avoid unnecessary
17 duplication of services, with the much larger Whiteford, Taylor & Preston, LLP firm to take the lead
18 in most matters, and with the McGrane LLP firm to take the lead in matters only as, when and if it is
19 specifically asked to do so by the Committee or Whiteford Taylor." *Id.*

20 23. In reality, McGrane billed absolutely no time to addressing the fee applications of
21 Howrey's former professional with which Whiteford had connections; but he did spend 32.35 hours
22 on his own fee applications, charging the estate \$6,170.00 in fees. McGrane also spent 4.2 hours on
23 his employment application, for a total of \$3,360 in fees, and 17.45 hours on "general case

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26² The Trustee also objects to McGrane's request to be paid \$200.00 for .25 hours billed on January 18, 2012
for work that has no apparent relationship to this chapter 11 case. *See Application*, Exhibit C ("E-mails to
M. Farrington re Dewey & Lebouef [sic] and potential case.")

1 administration” for a total of \$10,670.00 in fees. In total, McGrane reports spending 54 hours and
2 billing fees of \$20,200.00 either getting retained, filing fee applications, or addressing other general
3 case administration matters. Stated differently, fully one-quarter of the time for which McGrane
4 seeks compensation was focused on administrative matters that provided absolutely no benefits to
5 this estate. That is precisely the type of “inefficiencies and additional administrative costs [that] may
6 result from two law firms representing the Committee” that the Trustee worried would happen with
7 McGrane’s retention. *See* Trustee’s Response, p. 1, *see also Puget Sound*, 924 F.2d at 961 (affirming
8 bankruptcy court’s reduction of committee counsel’s request to be compensated for taking 25 hours
9 to prepare a fee application).

10 24. Other than conducting the “preliminary investigation into potential claims the Debtor
11 may have under Chapter 5 of Section 723” discussed above, the only other substantive, non-
12 administrative, task McGrane billed for relates to the Hispanic Farmers litigation. McGrane reports
13 that he billed 17.5 hours totaling \$13,300.00 for:

14 negotiating with the Trustee and Citibank regarding the terms of motions to
15 reject client agreements related to the Hispanic Farmers Litigation [and] the
16 review and reply to objections and questions regarding the motions to reject
17 client agreements related to the Hispanic Farmers litigation.

18 *See Application*, p. 9. Of the 12 time entries McGrane billed to Hispanic Farmers issues, only
19 one entry states that McGrane communicated with Citibank’s counsel – an email on December
20 22, 2011, which McGrane billed 1.2 hours to compose. *See Application*, Ex. E. The rest of
21 McGrane’s time entries for Hispanic Farmers reflect that he was communicating with Whiteford
22 attorneys, meeting with Whiteford attorneys, preparing hearing materials for Whiteford
23 attorneys, or attending hearings with Whiteford attorneys.

24 25. For example, on December 20, 2011, McGrane billed 1.2 hours for “e-mail
25 correspondence with B. Englander re: [Hispanic farmers matter].” *See Application*, Ex. I. On
26 February 8, 2012, McGrane billed 1.0 hours to “review file and correspondence from B.

1 Englander” and another 1.2 hours to “meet with B. Englander”. *Id.* A day later, on February 9,
2 McGrane billed 2.0 hours to “Prepare for hearing on rejection of contracts, meet with B.
3 Englander re: same”, and another 1.0 hours to “attend hearing and meet with B. Englander and
4 A. Diamond.” *Id.* The next day, McGrane billed another hour to “review form of order and
5 related case materials from B. Englander, discuss with B. Englander. (1.0)” *Id.*

6 26. McGrane’s time entries for the Hispanic Farmers litigation demonstrate that his
7 involvement in those issues created precisely the sort of “inefficiencies and additional
8 administrative costs [that] may result from two law firms representing the Committee” that the
9 Trustee feared would happen. McGrane assured the Trustee and this Court that he and Whiteford
10 had “agreed to avoid unnecessary duplication of services, with the much larger Whiteford, Taylor &
11 Preston, LLP firm to take the lead in most matters, and with the McGrane LLP firm to take the lead
12 in matters only as, when and if it is specifically asked to do so by the Committee or Whiteford
13 Taylor.” *See Reply*, p. 2.

14 27. The exact opposite turned out to be true: other than needlessly spending time
15 investigating claims that McGrane acknowledges have “nothing to do with this case”, McGrane
16 either duplicated the work Whiteford was doing on Hispanic Farmers, or billed the estate for
17 administrative matters. None of those services benefitted this estate, and as discussed above a good
18 portion of those services were directly contrary to McGrane’s prior representations to this Court and
19 the Trustee about the scope of his engagement. For those reasons, the Court should disallow
20 McGrane’s application to be paid for his work on “General Case Administration”, “Employment
21 Application”, “Hispanic Farmers”, and “Fee Applications”, totaling \$33,640.00.

22 *McGrane’s violation of the automatic stay justifies
23 disallowance of the Application in its entirety*

24 28. Following his resignation as co-counsel for the Committee, McGrane pursued a
25 strategy to reinsert himself into this case which culminated in his filing of the Adversary

1 Proceeding. After extensive briefing and a lengthy hearing, the Court concluded that McGrane
2 violated the automatic stay by filing the Adversary Proceeding, and threatened to hold McGrane
3 and his newly-formed client in contempt of court should they continue their efforts to exert
4 control over litigation claims that are property of the Howrey chapter 11 estate. In moving to
5 enforce the automatic stay to prevent McGrane's ill-conceived strategy from derailing this entire
6 chapter 11 case, the estate incurred attorney's fees and expenses in the amount of at least
7 \$189,704.50, and those fees continue to increase as McGrane pursues an appeal of this Court's
8 order. *See* Diamond McCarthy LLP Monthly Fee Statements reflecting fees billed to Matter 38
9 for November 2012 totaling \$76,309.50 [Dkt. No. 958], December 2012 totaling \$51,182.50
10 [Dkt. No. 998], and January 2013 totaling \$62,212.50 [Dkt. No. 1030].

12 29. When an estate professional violates his or her ethical duties or knowingly
13 violates the automatic stay, this Court has discretion to disallow that professional's fees in part or
14 in whole. *See, e.g., In re Song*, No. 02-17320-ER, 2008 WL 6058782 at *11, (9th. Cir. B.A.P.,
15 2008) (recognizing that a bankruptcy court has discretion to deny fees in whole or in part if it is
16 determined that counsel violated ethical duties); *In re Catholic Bishop of Northern Alaska*, No.
17 F08-00110-DMD, 2009 WL 2902917, at *9 (Bankr. D. Alaska, April 16, 2009) (disallowing
18 portion of counsel's fee application as sanctions for automatic stay violation).

20 30. In *In re Catholic Bishop*, the debtor became concerned that special counsel for the
21 creditors' committee had violated the automatic stay, and thus brought a motion for order to
22 show cause as to why sanctions should not issue against committee special counsel. 2009 WL
23 290917, at *2-5. Although the debtor did not request monetary sanctions for the stay violation,
24 the bankruptcy court disallowed special counsel's fees as a form of monetary sanction:
25

26 [Debtor] has incurred fees and costs in bringing this motion. Further,
 [debtor] is responsible for the payment of all administrative expenses

1 incurred in this case, including the fees of Manley & Stewart as special
2 litigation counsel to the [committee]. [Debtor] should not have to pay for
3 the cost of enforcing the stay. [Debtor] has not requested monetary
4 sanctions, but a disallowance of a portion of Manley & Stewart's fees
5 would essentially serve the same purpose, as it would reduce [the
6 Debtor's] overall administrative expenses.

7 *In re Catholic Bishop*, 2009 WL 2902917, at * 9.
8

9 31. Similarly here, McGrane violated the automatic stay by commencing the
10 Adversary Proceeding, and this estate should not be required to pay for the costs of enforcing the
11 stay by bringing the Stay Motion. As set forth in Diamond McCarthy's monthly fee statements,
12 from November 2012 through January 2013 the estate incurred almost \$190,000.00 in attorneys
13 fees in responding to McGrane's stay violation. [Dkt. Nos. 958, 998, 1030]. Requiring the
14 estate to pay McGrane LLP an additional \$80,000.00 for work that provided no benefits would
15 further compound the injury this estate has suffered as a result of McGrane's unrelenting efforts
16 to interfere with this case. Disallowing the Application would serve the same purpose as
17 imposing monetary sanctions on McGrane for violation of the stay – it would ensure that this
18 estate is not unnecessarily burdened by administrative expenses of professionals who have
19 interfered with the orderly administration of this estate.
20

21 *McGrane's admitted false and incomplete disclosures justify
22 disallowance of the Application and disgorgement of all
23 previously paid amounts*
24

25 32. Even if it were not so crystal clear that McGrane LLP had provided no benefit to
26 this estate within the scope of its retention that was not duplicative of the work of the
Committee's lead counsel, the Court should nevertheless disallow the Application in light of
McGrane's admission that he provided false and incomplete disclosures to support the Retention
Application.
26

1 33. Bankruptcy Rule 2014 requires estate professionals to disclose “all of the
2 [applicant’s] connections with the debtor, creditors, [or] any other party in interest” *See In*
3 *re Condor Systems, Inc.*, 302 B.R. 55, 69 (Bankr. N.D.Cal. 2003) *citing* FED. R. BANKR. P.
4 2014(a). Rule 2014(a)’s disclosure requirements are strictly applied to ensure that the Court has
5 the necessary information to comply with its responsibilities in approving the retention. *In re*
6 *Condor Systems, Inc.*, 302 B.R. at 69; *see also In re Park-Helena Corp.*, 63 F.3d 877, 881-82 (9th
7 Cir. 1995). As the Ninth Circuit noted in *Park Helena*:

8 The disclosure rules impose upon attorneys an independent responsibility.
9 Thus, failure to comply with the disclosure rules is a sanctionable
10 violation, even if proper disclosure would have shown that the attorney
11 had not actually violated any Bankruptcy Code provision or any
Bankruptcy Rule.

12 *In re Park-Helena Corp.*, 63 F.3d at 880. The disclosure rules are to be applied literally, even if
13 the results are “sometimes harsh.” *Id.* at 881. Negligence or inadvertent mistake is no excuse for
14 a failure to make full and accurate disclosures. *Id.* at 882.

15 34. Here, McGrane admits that the disclosures he provided in support of the
16 Retention Application were “likely not complete.” *See* 5/9/2014 Declaration, p. 1, ¶¶ 3-4. But
17 even that statement by McGrane is at best disingenuous. Inasmuch as McGrane further admits
18 that, despite his sworn disclosures to the contrary, he did in fact continue to represent several
19 Howrey LLP creditors during the entirety of his tenure as co-counsel to the Committee,
20 McGrane’s disclosure is not just “not complete”, it is false. *See* 5/11/2014 Declaration, p. 1, ¶ 3.
21 McGrane’s admission that his Rule 2014 statements were incomplete and false gives the Court
22 discretion to deny his fees altogether. *See In re Park-Helena Corp.*, 63 F.3d at 882 (“Even a
23 negligent or inadvertent failure to disclose fully relevant information may result in a denial of
24 all requested fees.”).

CONCLUSION

35. As discussed, McGrane LLP spent the majority of its time as co-counsel for the Committee in the pursuit of legal theories that have nothing to do with this chapter 11 case, and which brought no value to this estate. Moreover, McGrane now admits that he made inaccurate and false disclosures to support his firm's retention application, and he was found to have violated the automatic stay by attempting to take control of one of this estate's principal assets.

36. For the reasons stated, the Trustee submits that it would be well within this Court's discretion to disallow the Application in its entirety and, in addition, to require McGrane LLP to disgorge all amounts that he has previously been paid. The Trustee seeks entry of an order providing that and such other relief as to which the estate shows itself to be entitled.

Dated: July 8, 2014

/s/ Stephen T. Loden, Esq.

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2 **CERTIFICATE OF SERVICE**
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5 United States Bankruptcy Court of California CM/ECF system upon filing of above described document
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31 date above written.
32

33 _____
34 */s/ Stephen T. Loden*
35 Stephen T. Loden
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